Filed 5/31/19 In re L.B. CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re L.B., a Person Coming Under the Juvenile Court Law.	
D.B., Petitioner, v. SUPERIOR COURT FOR THE COUNTY OF SAN FRANCISCO, Respondent; CITY AND COUNTY OF SAN FRANCISCO, HUMAN SERVICES AGENCY, Real Party in Interest.	A156869 (San Francisco City & County Super. Ct. No. JD19-3004)

D.B. (Mother) seeks an extraordinary writ (rule[1] 8.452) directed to the juvenile court's order removing her son, L.B., from her custody, denying reunification services, and setting a section 366.26 permanency planning hearing. Mother contends that the court erred in refusing to grant a continuance of the dispositional hearing. She also maintains that the City and County of San Francisco, Human Services Agency (Agency) failed to establish that it made reasonable efforts to prevent the need for L.B.'s removal. Because the court did not abuse its discretion in refusing to grant a continuance and

[1] All rule references are to the California Rules of Court. All statutory references are to the Welfare and Institutions Code unless otherwise specified.

because substantial evidence supports the court's finding that the Agency made reasonable efforts to prevent removal, we deny Mother's petition.

FACTUAL AND PROCEDURAL HISTORY

The Agency filed a dependency petition (§ 300) on January 8, 2019 for infant L.B. following a referral from hospital staff after his birth. The Agency alleged that Mother had untreated mental health disorders, substance abuse issues, and lacked housing and necessities to care for an infant. The Agency also alleged that Mother had an older child who had been adjudged a dependent of the court with whom Mother failed to reunify.

The Agency's initial report stated that Mother had anger management issues as well as bipolar and developmental disorders. Mother informed the Agency that she had secured family housing for herself and L.B., but she admitted that she had been terminated from many housing programs due to her anger and aggressive behavior. She conceded involvement with men that used and dealt drugs, who forced her to use cocaine. Mother used cocaine and had been placed on a 5150 hold during pregnancy. She took Seroquel and had since she was a minor, but she did not like the medication because it knocked her out. She could not remember the last time she saw her psychiatrist. Doctors and hospital staff who treated Mother during pregnancy reported concerns regarding her explosive anger, lack of impulse control and coping mechanisms, potential substance abuse problems, and her inability to attend scheduled appointments, utilize various stabilization and housing services provided, and care for herself. A psychiatrist stated that Mother may have bipolar disorder but found it difficult to diagnose given her history of trauma, homelessness, intermittent drug use, and her developmental delay.

Mother did not appear at the detention hearing, and the court ordered that L.B. be detained in foster care. At the jurisdictional hearing, Mother appeared as did alleged father, K.B., and Mother provided the name of another alleged father, T.W. The court ordered paternity testing for K.B. and continued the hearing.

Mother failed to appear at the continued jurisdictional hearing, and the court entered a willful failure to appear finding. The court granted the Agency's motion to

strike the petition's prior allegations and to amend it to allege that (1) Mother tested positive for cocaine during pregnancy, stated that she used cocaine in order to secure housing, and had lost her most recent family housing; (2) Mother was in need of a mental health assessment and possible care, had a long history of trauma and anger management issues, had been diagnosed bipolar, and had been placed on a 5150 hold during pregnancy; and (3) L.B. had a half-sibling who had been adjudged a dependent of the court and with whom Mother failed to reunify. The court found the allegations true, found that it had jurisdiction under section 300, subdivisions (b) and (j), and set a dispositional hearing.

On March 25, 2019, the court held a contested dispositional hearing. The Agency's disposition report stated that Mother's psychological evaluation from her child's prior dependency matter diagnosed her with bipolar disorder, major depression, conduct disorder PTSD, anxiety, mixed personality disorder with paranoid and borderline types and obsessive and psychotic features, and an extremely low IQ. Mother persisted with issues of mental health, anger, homelessness, domestic violence, and substance abuse. The Agency documented its efforts to prevent removal, and it recommended that the court (1) declare L.B. a dependent; (2) deny reunification services to Mother because of the prior termination of reunification services for L.B.'s half-sibling after Mother's failure to reunify and because Mother had not made a reasonable effort to treat the mental health, anger, and domestic violence concerns that led to the prior removal (§ 361.5, subd. (b)(10)); and (3) deny reunification services to the alleged fathers.

Mother failed to appear at the dispositional hearing, and her counsel requested a continuance. Counsel stated that she had spoken to Mother the day before, and Mother said that she intended to appear to testify. Counsel informed the court that she received a phone call shortly before the hearing from a man who identified himself as Mother's friend and said that he had taken Mother to the emergency room because she was very sick. Counsel for the Agency and L.B. opposed the continuance, and the court denied the request, finding that it was not in the best interests of L.B., who needed permanency. The

court relieved counsel for alleged father K.B. because genetic testing established that he was not the father.

After the Agency's social worker, Ricardo Montenegro (Montenegro), testified, the court adopted the Agency's recommendations. The court found that services were consistently offered to Mother, that Mother had not successfully availed herself of these services in the case of L.B.'s half-sibling, and that Mother's circumstances had not changed appreciably since then. Mother's mental health, explosive anger, substance abuse, and failure to seek to improve her chronic homelessness required and justified removal, and Mother's progress toward alleviating the causes necessitating L.B.'s detainment had been negligible. The court declared L.B. a dependent, ordered his removal from parental custody, found the Agency had made reasonable efforts to prevent removal, and denied reunification services to Mother and the alleged fathers.[2] The court set a section 366.26 hearing for July 17, 2019.

DISCUSSION

I. The Request for a Continuance

Mother contends that the court's denial of her request for a continuance of the dispositional hearing resulted in prejudicial and reversible error. We disagree.

"Section 352 is the primary statute governing continuances in dependency cases." (*Renee S. v. Superior Court* (1999) 76 Cal.App.4th 187, 194.) It states, in pertinent part, "Notwithstanding any other law, if a minor has been removed from the parents' . . . custody, a continuance shall not be granted that would result in the dispositional hearing . . . being completed longer than 60 days . . . after the hearing at which the minor was ordered removed or detained, unless the court finds that there are exceptional circumstances requiring a continuance." (§ 352, subd. (b).) A continuance

[2] The court denied reunification services to K.B. because he removed himself from the proceedings after genetic testing established that he was not the minor's father; and the court denied services to alleged father T.W. because he consistently refused to engage with the Agency. The alleged fathers are not party to this writ petition, and the court's ruling denying them reunification services has not been challenged.

that is contrary to minor's interests may not be granted. (*Id.*, subd. (a).) In considering the minor's best interests, substantial weight shall be given "to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements." (*Ibid.*) Continuances are discouraged, and we review the denial of a continuance for abuse of discretion. (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 810–811.)

The court must conduct a dispositional hearing within 60 days of a ruling removing a child from his or her parent's custody at the detention hearing. (§ 352, subd. (b).) As L.B. was detained on January 9, 2019, the March 25, 2019 dispositional hearing was already beyond the 60-day limit. That fact alone militates in favor of the trial court's denial of the requested continuance.

Mother also did not carry her burden to show exceptional circumstances for the continuance. While illness of a party can constitute good cause (cf. *Jeff M. v. Superior Court* (1997) 56 Cal.App.4th 1238, 1243, fn. 4), the court was entitled to conclude that Mother failed to offer credible evidence of her illness. Mother's counsel reported that she received a call from Mother's friend stating that Mother was very sick and in the hospital. The court invited counsel to add all pertinent information to her request for a continuance, but counsel provided nothing further. The caller presumably did not identify himself and did not convey details regarding Mother's purported illness. Mother did not provide any information from the hospital. Moreover, Mother did not appear at the detention hearing, and she willfully failed to appear at the jurisdictional hearing. Given L.B.'s need for permanency, the court was entitled to conclude that an unidentified individual's claim that Mother had an unspecified illness that prevented her from coming to court was not an adequate showing to justify a continuance.

In any event, Mother does not establish prejudicial error. (See *In re Celine R.* (2003) 31 Cal.4th 45, 60 [applying the harmless error standard to the court's alleged erroneous failure to appoint separate counsel for minor]; *In re Angelique C.* (2003) 113 Cal.App.4th 509, 523 [parent failed to demonstrate prejudice resulting from continuance of a dispositional hearing in violation of section 352, subd. (b)].) Mother

argues that she could have presented testimony showing that she should have been offered reunification services, but this is pure conjecture. The court bypassed reunification services under section 361.5, subdivision (b)(10) because of the termination of such services for L.B.'s half-sibling after Mother's failure to reunify and because of Mother's failure to make reasonable efforts to treat the issues that led to the removal of L.B.'s half-sibling.[3] Mother does not contend that the evidence was insufficient to support this finding; indeed, Mother did not call any witnesses at the hearing, counsel did not make an offer of proof to show how Mother's testimony might have affected the court's decision, and Mother does not attempt to explain on appeal what evidence could have been presented. On this record, there is no reversible error.

II. Reasonable Efforts to Prevent Removal

We also reject Mother's claim that the Agency failed to make reasonable efforts to prevent L.B.'s removal. A dependent child shall not be taken from the physical custody of his or her parent unless the court finds clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent to exercise his or her right to custody, and there are no reasonable means by which the child's physical and emotional health can be protected without removing the child. (§ 361, subd. (d).) If the court orders that a child be removed from parental custody at the dispositional hearing, it must determine "whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home . . . ." (§ 361, subd. (e).) " 'The focus of the statute is on averting

[3] Section 361.5, subdivision (b)(10) states that reunification services need not be provided to a parent when the court finds, by clear and convincing evidence, "[t]hat the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian."

harm to the child,' " and the court " 'may consider a parent's past conduct as well as present circumstances.' " (*In re A.S.* (2011) 202 Cal.App.4th 237, 247.)

We review the dispositional findings for substantial evidence. (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1161, 1163–1164; *In re A.R.* (2015) 235 Cal.App.4th 1102, 1115–1116.) "We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record in favor of the juvenile court's order and affirm the order even if other evidence supports a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order." (*In re T.W.*, at pp. 1161–1162.)

Mother does not argue that the evidence was insufficient to support the court's finding that allowing her custody of L.B. posed a substantial danger to his physical health, safety, protection, or physical or emotional well-being (§ 361, subd. (d)). Instead, she contends that the evidence does not establish the Agency made reasonable efforts to prevent L.B.'s removal. Specifically, Mother argues that the Agency failed to provide her with anger management, mental health, parenting education, and housing referrals.

The record contains substantial evidence supporting the court's reasonable efforts finding, including a multipage discussion of reasonable efforts and Montenegro's testimony regarding the same. After L.B.'s detention, the Agency provided twice-weekly visitation to Mother. At first, the Agency transported Mother to visits outside of San Francisco, but then it moved the visits into San Francisco at Mother's request. During these visits, Mother often fell asleep holding L.B.; supervising staff repeatedly had to tell Mother she could not do that and instruct her on how to care for L.B. When staff directed Mother, she became angry and cursed and yelled. Although Mother attended most of her scheduled visits with L.B., she missed at least three, once because she said she had been incarcerated. Mother also failed to attend an appointment to review services for L.B., and the appointment could not proceed without her.

The Agency provided Mother with housing referrals and referred her to the Homeless Prenatal Program (HPP) for a substance abuse intake assessment. When HPP

does an intake, it also assesses whether a parent needs services and, if so, provides referrals, including for parenting classes and housing. Mother confirmed her intake at HPP but never went. She said that she did not understand why she had to make an appointment with HPP. When asked about her failure to show up, Mother said, "I ain't doing shit." The Agency explored the option of Mother staying with a family member and explained that she did not need to be homeless. Mother responded that she did not trust family, did not like shelters, people, or sharing rooms, and wanted to be alone. The Agency also encouraged Mother to talk to her social worker from a separate agency that provided her services. Montenegro encouraged Mother to follow through with HPP, but she refused to go into a housing situation.

When the Agency learned that one of L.B.'s alleged fathers had been arrested for domestic violence against Mother, Montenegro informed Mother of the ability to get into a domestic violence shelter or connect with domestic violence services. Mother refused. Similarly, the Agency requested that Mother submit to drug testing and referred her to a testing facility, but she did not go.

The Agency concedes that it was unable to provide Mother with referrals for anger management and mental health treatment. But Montenegro testified that this was because he was unable to meet with Mother in person to discuss her needs, as she missed all of their appointments. Cognizant of Mother's mental health issues, Montenegro also arranged to meet with Mother and her counsel to facilitate meaningful contact. Mother missed these meetings as well. Montenegro testified that he was able to meet with Mother only during her visits with L.B., which he went to twice to deescalate Mother after she became angry at staff and once to find her after a missed appointment. Mother took Seroquel (and at some point had a psychiatrist), but she would not discuss her mental health with Montenegro, she denied having mental health problems, and when Montenegro attempted to engage her about services generally, she repeatedly said, "I am not doing shit." Montenegro testified that he could not engage Mother, as she was either upset or did not show up.

Mother argues that the Agency should have sent her a letter or text regarding anger management, mental health, and childhood development referrals, and that it should have called more housing programs. However, "reasonable efforts, like reasonable services, need only be reasonable under the circumstances, not perfect." (*In re H.E.* (2008) 169 Cal.App.4th 710, 725.) Ample evidence shows that Mother refused to meet with the Agency, failed to use the initial services the Agency recommended, including substance abuse services that the Agency concluded were crucial in order to start mental health treatment, and repeatedly stated that she would not do anything. The Agency was not required to "take [Mother] by the hand" if she refused to cooperate. (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5 [discussing a parent's failure to engage in reunification services].)

Mother's reliance on *In re Ashly F.* (2014) 225 Cal.App.4th 803 (*Ashly F.*) does not alter our conclusion. There, a mother physically abused her children without their father's knowledge. (*Id.* at pp. 806–807.) The Department of Children and Family Service's report stated in conclusory fashion that reasonable efforts were taken to prevent removal and there were no reasonable means to protect the children without removal, but the report did not offer any supporting evidence or describe the means considered and rejected. (*Id.* at p. 809.) On appeal, the court concluded that removal of the mother from the home, among other things, should have been considered. (*Id.* at p. 810.) Unlike in *Ashly F.*, the Agency in this case described the reasonable efforts it made to avoid removal, L.B. was a helpless infant with no father available to care for him, and his removal could not have been avoided by removing Mother from the home.

Mother also points out that the Agency failed to prepare a case plan under section 16501.1, subdivision (d), which had to be prepared by the earlier of 60 days from the minor's initial removal or the dispositional hearing. (§ 16501.1, subd. (e).) While true, Mother does not show how a case plan would have yielded a more favorable result. (See *In re Jesusa V.* (2004) 32 Cal.4th 588, 624 [a harmless error analysis is generally used when a statutory mandate is not followed].) As set forth above, substantial evidence supports the court's finding that the Agency made reasonable efforts to prevent removal.

Further, other than information that could be obtained from the family meeting Mother failed to attend (§ 16501.1, subds. (a)(3), (b)(1), (c), (d)(2)(B), (g)), the Agency's disposition report contains much of what would be in a case plan—a description of preplacement services and reasonable efforts taken to prevent removal (*id.*, subd. (b)(2)); a statement that reunification services were not recommended (*id.*, subd. (b)(5)); a permanent plan and description of placement (*id.*, subds. (b)(6), (d)(1)); reasons for removal (*id.*, subd. (g)(1)); and the frequency of post-removal contact with parents and siblings (*id.*, subd. (g)(5)(A), (B), (g)(6)).

Similarly, assuming the Agency erred by failing to text or mail Mother mental health and anger management referrals, there was no "reasonable probability" that the court would have determined that L.B.'s removal was unwarranted. (*Ashly F.*, *supra*, 225 Cal.App.4th at p. 811.) Despite a documented history of mental health problems, Mother denied that she had any mental health issues, questioned and did not understand why the Agency was involved with L.B., refused to follow up with HPP or enter any shelter, refused to drug test, could not properly care for L.B. during visits; and, again, there was no other parent with whom L.B. could be placed. It is thus not reasonably probable that a viable alternative to L.B.'s removal existed. (§ 361, subd. (d).)

DISPOSITION

The petition is denied on the merits. (See § 366.26, subd. (*l*)(1)(C); rule 8.452(h).) Mother's request for a stay is denied. Our decision is final as to this court immediately. (Rules 8.452(i), 8.490(b)(2)(A).)

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BROWN, J.

WE CONCUR:

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STREETER, ACTING P. J.

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TUCHER, J.